

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JAMES JEFFREY BUCHANAN,

Plaintiff,

vs.

LAS VEGAS METROPOLITAN POLICE
DEPARTMENT, *et al.*,

Defendants.

Case No. 2:11-cv-00271-RCJ-GWF

ORDER

This matter is before the Court on Plaintiff in Proper Person Motion for Contempt Against Mitchell L. Posin, Esq. (#86) filed December 26, 2012 and Plaintiff's In Proper Person Motion for Attorney Fees and Sanctions Already Levied Against Plaintiff to Be Taken Off Plaintiff and Levied on Mitchell L. Posin, Esq. (#90), filed on January 11, 2013. At the Court's direction, Plaintiff served this motion on his former counsel in this action, Mr. Posin. Mr. Posin did not file a written response, but did appear at the February 14, 2013 hearing in this matter.

BACKGROUND AND DECISION

On May 9, 2012, the Court granted Defendant City of Las Vegas's Motion to Compel Discovery Responses from Plaintiff (#33) to compel further responses to requests for production of documents. The Plaintiff had responded to each of the Defendant City's requests by stating "[a]lready provided in disclosures" without any further explanation. The Court found that these responses were evasive and improper. The Court also determined that the Defendant City was entitled to an award of attorney's fees and expenses against the Plaintiff pursuant to Fed.R.Civ.Pro. 37(a)(5). *Order* (#39). On June 20, 2012, the Court awarded the Defendant City the total sum of \$3,500.00 and ordered the Plaintiff to make payment by July 11, 2012. *Order* (#53).

1 On July 11, 2012, the due date for payment, the Plaintiff filed a Motion to Toll Payment of
2 Fees and Costs (#55). The Court found "that Plaintiff's motion is untimely, without merit and
3 brought for the purpose of delaying payment of fees." The Court therefore awarded the City
4 Defendants an additional \$1,225.00 in fees for having to oppose Plaintiff's motion. The Court
5 therefore ordered Plaintiff to make payment in the sum of \$4,725.00 to the City Defendant no later
6 than August 27, 2012. *Order* (#58), *pg.* 2. This award remains unpaid.

7 Mr. Buchanan subsequently discharged Mr. Posin as his counsel and now represents himself
8 in this action. Mr. Buchanan argues that the failure to provide proper discovery responses was
9 solely the fault of Mr. Posin and that Mr. Posin should be held responsible for the payment of the
10 attorney's fee awards in Orders Nos. 39, 53 and 58. Mr. Posin argued at the hearing that he should
11 not be held responsible. He represented that Mr. Buchanan was an employee in his office at the
12 time of the foregoing matters and therefore was aware of the need to properly respond to the
13 discovery or pay the sanctions awarded by the Court. Mr. Buchanan confirmed that he was
14 employed in Mr. Posin's office at the times in question.

15 Rule 37(a)(5)(A) states that if a motion to compel is granted, "the court must, after giving
16 an opportunity to be heard, require the party or deponent whose conduct necessitated the motion,
17 the party or attorney advising that conduct, or both to pay the movant's reasonable attorney's fees."
18 Given that Mr. Buchanan was both Mr. Posin's employee and client, the Court finds that Mr. Posin
19 is, at least, as equally responsible as Mr. Buchanan for the failure to provide proper discovery
20 responses and for filing the unjustified motion to toll the payment of fees and costs on the date that
21 payment was due. Based on the same circumstances, the Court cannot find that Mr. Buchanan is
22 not responsible such that he should be absolved of liability for payment of the award to the City.
23 Accordingly,

24 **IT IS HEREBY ORDERED** that Plaintiff in Proper Person Motion for Contempt Against
25 Mitchell L. Posin, Esq. (#86) and Plaintiff's In Proper Person Motion for Attorney Fees and
26 Sanctions Already Levied Against Plaintiff to Be Taken Off Plaintiff and Levied on Mitchell L.
27 Posin, Esq. (#90) are granted, in part, and denied, in part. The Court's previous Orders Nos. 39, 53
28 and 58 are modified and amended as follows:

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